

May 27, 2021

Via ECF

The Honorable Roanne L. Mann
United States Magistrate Judge
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

**Re: Joint Status Report: *Suffolk County Water Authority v. The Dow Chemical Co. et al.*,
No. 2:17-cv-6980-NG-RLM, and Related Cases**

Dear Judge Mann:

All parties jointly submit this status report concerning their further conferrals on open issues, as directed by Your Honor at last week's hearing on Defendants' motions to compel and in the Court's subsequent May 20, 2021 Order (ECF 177).

After coordinating schedules and some preliminary communications to help better define the areas for discussion, all Parties engaged in a meet and confer call on May 25, 2021. Plaintiffs were joined by one of their retained technical specialists and Defendants were joined by two of their technical specialists. While there is follow-up work to be done, the Parties made progress toward resolving the open issues. Below is a summary of where these issues stand.

SCWA's test databases. Based on the initial discussions between the Parties and their technical specialists, it appears electronic production of SCWA's test data for the period 1970 through the present is likely feasible. The Parties are conferring again with their technical specialists on May 28, 2021 to discuss additional particulars of this potential data export.

Distribution models. SCWA and the other Plaintiffs that have distribution models (Bethpage, Carle Place, Garden City Park, Hicksville, Huntington/Dix Hills, Jericho, Manhasset-Lakeville, Mineola, Plainview, Port Washington, Roslyn, South Farmingdale, and Western Nassau) are working through technical and logistical issues but are willing to package these model files and produce them to Defendants. Barring any technical issues, these Plaintiffs plan to produce the modeling files by June 4, 2021.

Plaintiff New York American Water Company ("NYAW") has also conferred with its technical experts on NYAW's use of distribution models and potential production methods. The modeling software used by NYAW is different from that used by other Plaintiffs. However, NYAW has provided information to Defendants on this issue in separate written communications and has committed to work with Defendants to facilitate production of the data files in a timely manner.

Hon. Roanne L. Mann

May 27, 2021

Page 2

Groundwater models. Plaintiffs have confirmed that the Hicksville, Bethpage, and Garden City Park groundwater models are duplicative of the CDM Smith model and that the engineering firm in possession of these models has not had access to the program that runs these models since approximately 2008. SCWA has also again confirmed that its groundwater model is duplicative of the CDM Smith model. Subject to agreeing on the wording for a stipulation, this issue is resolved.

Well files. Plaintiffs have agreed to prioritize for production any water supply applications and well permits that have been digitized and have not yet been produced. Plaintiffs will determine the extent to which additional “well files” may exist in hard copy form. SCWA will produce digitized water supply applications and well permits by June 4, to the extent these documents have not been produced. Once all Plaintiffs determine what, if any, remaining “well files” exist, and when they can be produced, they will share that information promptly with Defendants.

Plaintiff New York American Water believes that it has produced the requested well information that is within its possession, custody and control. However, because many of the impacted wells were installed decades ago (some as far back as the 1940’s and 1950’s), and because NYAW did not begin acquiring its systems until 2012, NYAW may not have all of the requested information. NYAW will, however, continue searching through its records to ensure that all such information has been located and produced. NYAW will supplement its production if any additional information is located.

Plaintiff Hicksville Water District believes it has produced the requested well information in its possession, but will confirm this and produce any additional responsive documents on or before June 4, 2021.

Emails. Plaintiffs are still reviewing emails for production, and the Parties have agreed to discuss amending their previous list of agreed upon email search terms to cut down on the universe of emails at issue. Defendants have indicated their willingness to potentially narrow the current list of search terms based on analytics to be provided, and Plaintiffs agreed to provide Defendants with their proposed amendments, and any analytical data they believe supports those amendments, including projected timing for review and production of remaining emails. In addition, Plaintiffs have arranged for substantial additional reviewer resources, in order to expedite the completion of document production. The Parties will have a follow-up meet-and-confer on these issues next week.

Other items. On May 20, 2021, SCWA specified for Defendants the nine additional wells with dioxane detections since SCWA’s prior response, and also produced a current comprehensive list identifying all wells with dioxane detections, inclusive of those nine wells. Today, NYAW specified for Defendants four additional wells with dioxane detections since its prior response. Hicksville stated today that there is no change to the number or identity of the dioxane-impacted wells listed in its Fact Sheet. The other Plaintiffs are in the process of updating the lists of wells with dioxane detections, to the extent they differ from the lists already provided, and will begin producing any updated lists this week.

The Parties are working to set up a follow-up call to discuss additional open issues relating to interrogatory responses and timing for further documentary collection and production.

Hon. Roanne L. Mann

May 27, 2021

Page 3

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The parties are continuing to confer and will update the Court in the parties' joint status report to be submitted next week, on June 3, 2021 (the regularly scheduled status report pursuant to the Court's March 19, 2021 Case Scheduling Order (ECF 171)).

Respectfully submitted,

/s/ Stephanie D. Biehl

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Hon. Roanne L. Mann

May 27, 2021

Page 4

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Hon. Roanne L. Mann

May 27, 2021

Page 5

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